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Lawyers' conferences drag out trial of Westmoreland libel suit

NEW YORK (AP) — Retired Gen. William C. Westmoreland's \$120 million libel suit against CBS is moving at a glacial pace.

Already it is 10 weeks old, with a two-week holiday recess coming up and bitter procedural battles likely to follow.

U.S. District Judge Pierre N. Leval has tried to keep things moving, but the testimony of every important witness has been repeatedly interrupted by long conferences outside the jury's hearing as the judge adjudicates disputes over what can or cannot be asked.

More disputes appear to be inevitable following his ruling last week that while certain information in an internal CBS study might be admissible, the report's conclusions cannot be used as evidence.

The trial enters its 11th week today with CBS producer George Crile due back on the witness stand for a sixth day of questioning by Gen. Westmoreland's lawyer, Dan M. Burt.

The general, who commanded U.S. forces in Vietnam from 1964 to 1968, says he was defamed by the 1982 broadcast "The Uncounted Enemy: A Vietnam Deception." The documentary alleged that Gen. Westmoreland suppressed information about enemy troop strength in 1967 in an effort to make it appear that his own soldiers were winning the war.

Judge Leval originally told the jurors the trial might be finished in 10 weeks, with four months as the projected outside time limit. That was in mid-October.

Mr. Burt still plans to call at least five more witnesses from the network, including correspondent Mike Wallace, who narrated the broadcast; Samuel Adams, an ex-CIA analyst who was a consultant for the documentary; Howard Stringer, the executive producer; Andrew Lack, the senior producer, and Ira Klein, a film editor who has been critical of Mr. Crile's methods.

Only when his questioning is finished will CBS lawyer David Boies begin calling his own witnesses to try to prove that the broadcast was accurate, or at least that CBS

did not knowingly or recklessly broadcast false charges against Gen. Westmoreland.

CBS lawyers said Judge Leval seemed to have reduced Mr. Burt's maneuvering room somewhat with his ruling last week that most of the internal CBS report is irrelevant to the trial. Mr. Boies called the ruling a victory for CBS.

However, Richard Riese, a lawyer assisting Mr. Burt, said "there are a lot of issues that are still alive" despite the decision.

Network executive Burton Benjamin concluded in the July 1982 report that Mr. Crile violated CBS News guidelines by "coddling" friendly witnesses, by failing to interview witnesses favorable to Gen. Westmoreland, by interviewing a sympathetic witness twice and by showing one witness excerpts of interviews with others.

In Mr. Crile's five days on the witness stand, Mr. Burt stressed those points, trying unsuccessfully to get the producer to admit to some kind of misconduct.

While admitting that he secretly tape-recorded conversations with three sources, Mr. Crile has not admitted that he did anything wrong. Mr. Leval has forbidden Mr. Burt from telling the jury directly that the secret taping drew Mr. Crile a one-year suspension from the network, which ended last summer.

Mr. Burt made several efforts to persuade Judge Leval to let the jury see Mr. Benjamin's findings, which contain precisely the kinds of statements that Mr. Crile has refused to make. But the judge ruled that Mr. Benjamin's opinions were not relevant.

"If it is the case that various internal rules of CBS were broken in the making of the documentary, that fact has no bearing on whether the documentary was made in reckless or intentional disregard of the truth," the judge wrote. "To show such violation of the rules might indeed show recklessness of a different sort — not recklessness as to truth. It might therefore prejudice the jury against the defendants."

The trial will recess Wednesday and resume on Jan. 2.